

UNITED STATES SUBMISSION  
WTO COMMITTEE ON TRADE AND ENVIRONMENT SPECIAL SESSION  
SUB-PARAGRAPH 31(I) OF THE DOHA DECLARATION

Introduction

During the course of 2002, the CTE in Special Session conducted a useful exchange of views on the scope of the mandate in sub-paragraph 31(i) of the Doha Declaration and provided an opportunity for delegations to communicate how they would like to see the negotiations proceed. It is now embarking on a phase of negotiation that will be increasingly concerned with discussion of specific examples of provisions in MEAs that are within the terms of the mandate. The United States welcomes this development and is prepared to engage in more in-depth analysis of the relationship between specific trade obligations set out in MEAs and WTO rules. The purpose of this U.S. submission is to contribute to the commencement of this phase of work in order to promote the development of a firm factual and analytical foundation for any eventual results under the 31(i) mandate. This phase should include efforts to understand the experience of individual Members in negotiating specific trade obligations in MEAs and implementing them.

While this submission provides U.S. views on examples of specific trade obligations in the agreements enumerated in WT/CTE/W/160/Rev.1, it is without prejudice to U.S. views on any other provisions contained in MEAs that are not specifically referenced in this submission. The United States also submits this paper without prejudice to U.S. views on the applicability of WTO rules, which presumably will be discussed at a later stage in the negotiations. Finally, the inclusion of particular MEA provisions and exclusion of others is intended to further a constructive discussion in the CTE and is not an indication of the importance or environmental significance of any particular MEA provision in relation to any other.

Limits in the Mandate

In reviewing WT/CTE/W/160/Rev.1, the United States was mindful of the parameters set forth in the mandate in sub-paragraph 31(i). In particular, the United States focused on those provisions that could be categorized as “specific trade obligations.”

- First, a specific trade obligation is one that requires an MEA party to take, or refrain from taking, a particular action. Such action must be mandatory and not simply permitted or allowed by a provision in an MEA. In other words, it cannot be discretionary.
- Additionally, a specific trade obligation must be “set out” in an MEA.
- For purposes of the immediate inquiry into examples of specific trade obligations, a further limit in the mandate is relevant. That is, the mandate only covers trade obligations among parties. Thus, it would include only those provisions in which parties to an MEA agree to bind themselves to trade obligations vis-a-vis each other. It would not include obligations requiring parties to take particular trade action in relation to non-parties.

## Review of U.S. Views in CTE Special Session Discussions

The United States has previously communicated its perspective in discussions in the CTE in Special Session under sub-paragraph 31(i). First and foremost, the United States is interested in ensuring that any result in this negotiation maintains the integrity and mutual supportiveness of both sets of international obligations – those in MEAs on the one hand and those in the WTO on the other. We must be careful not to create any reluctance on the part of individual countries to join MEAs for fear that they are simultaneously agreeing to prejudice their WTO rights. Furthermore, ministers at Doha in paragraph 32 of the Declaration already directed that the negotiations must not add to or diminish the rights and obligations of Members under existing WTO agreements.

In the U.S. view, the MEA/WTO relationship has worked and is working quite well. WTO rules have not interfered with trade obligations among MEA parties and have not had a stifling effect on MEA negotiators' willingness to include trade obligations in MEAs where deemed important for environmental purposes. For their part, MEA negotiators have generally sought to tailor their trade provisions to meet particular environmental purposes, particularly among parties, in a way that takes account of WTO implications.

The United States has also stressed the critical importance of enhanced domestic coordination between MEA and WTO policy-makers and negotiators. Fundamentally, there is no substitute for this since it continues to be the most direct and effective means of maintaining compatibility between MEA trade obligations and WTO disciplines. In this regard, the United States believes that progress to enhance communication and cooperation between MEAs and the WTO under sub-paragraph 31(ii) could also offer dividends in promoting increased coordination between environment and trade officials at national levels.

### Categories of Specific Trade Obligations in MEAs

It is interesting to note that, even among specific trade obligations set out in MEAs, there appears to be a wide variety in terms of form and content. Variations include:

- obligations, whether regulating exports or imports, that seek to:
  - help conserve something in the party of export (e.g., specimens of endangered species);
  - help protect an importing party from something potentially harmful (e.g., hazardous wastes or hazardous chemicals);
  - avoid harm to a global resource (e.g., the ozone layer);
- for the sub-set of export obligations intended to protect an importing party from something harmful, those that require:

- notifying an importing party of action taken by the exporting party;
- notifying an importing party of a proposed export;
- restricting export if an importing party does not want it;
- restricting export if the exporting party believes it cannot be handled in an environmentally sound manner in an importing party;
- restricting export altogether;
- obligations that vary according to their role in an agreement, including:
  - core obligations that directly regulate trade (e.g., certain provisions of CITES);
  - obligations that support core ones by establishing substantive standards to control production and/or use of particular substances (e.g., certain provisions in the Montreal Protocol);
  - obligations that address ancillary aspects of import or export restrictions (e.g., designation of an import or export authority);
- obligations that apply independently of any particular decision on the part of a party and obligations that depend upon a party's prior decision to restrict imports or exports;
- obligations that specify procedures for modifying the scope of a trade obligation (e.g., for adding new species to the appendices of CITES or new chemicals to Annex III in the Rotterdam Convention).

Additionally, procedures differ among agreements on modifying the scope of a trade obligation. Some can require consensus of all parties, whereas others permit modifications upon the agreement of a certain number of parties less than consensus.

While the preceding examples provide some picture of the variety of potential specific trade obligations in MEAs, they are by no means definitive in terms of categorizing kinds of obligations.

#### Identification of Examples of Specific Trade Obligations Covered under the Mandate

In reviewing the compilation of agreements in WT/CTE/W/160/Rev.1, the United States has not limited its consideration to MEAs that are already in force. In the U.S. view, the important factor is whether there is a specific trade obligation that warrants analysis, rather than whether the MEA in question is in force. Further, some of the MEAs that are not yet in force could enter into force during the course of these negotiations. The United States also believes that the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the

meaning of such terms as “MEA,” “obligation,” “trade,” etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document.

As noted by the United States in the October 2002 meeting of the CTE in Special Session, there appear to be specific trade obligations set out in six MEAs listed in WT/CTE/160/Rev.1. These are: CITES, the Montreal Protocol, the Basel Convention, the Rotterdam (PIC) Convention, the Stockholm (POPs) Convention and the Cartagena (Biosafety) Protocol. (TN/TE/R/3, paragraph 30.)

Attached to this paper is a matrix that identifies some examples of specific trade obligations in these six agreements. Each example is a legally binding commitment to take a particular trade action. Each is “set out” in the relevant agreement. Each involves an obligation vis-a-vis another party to the MEA in question.

These specific trade obligations identified in the attached matrix can be contrasted with other provisions that, while they might also be environmentally significant, are not specific trade obligations covered by the mandate:

- Article 4 of the Montreal Protocol (in contrast to Article 4A) obligates parties to take particular trade action in relation to non-parties, rather than parties. The same is true of Article 4.5 of the Basel Convention.
- Article 13.3 of the Rotterdam Convention provides discretion to individual parties whether to subject certain of its chemical exports to labeling requirements and, as such, is not an obligation.
- Article 16 of the Biosafety Protocol, Article 4.2(a) of the Framework Convention on Climate Change and Article 10(b) of the Convention on Biological Diversity contain general, rather than specific, obligations that accord discretion to the parties regarding implementation.

### The Way Forward

The United States believes that the CTE in Special Session is now well positioned to proceed under sub-paragraph 31(i) in a more concrete, analytical manner. This phase in the work should begin to build a factual foundation that can subsequently permit the Committee to examine the relationship between these two distinct sets of international obligations. To further this effort, the United States suggests that:

- (1) other delegations also identify examples of specific trade obligations in the agreements listed in WT/CTE/W/160/Rev.1;

(2) the CTE in Special Session focus on those examples with respect to which there appears to be a consensus that they are specific trade obligations without precluding discussion on other provisions raised by delegations; and

(3) on this basis, the CTE in Special Session could invite individual delegations to provide information on their experiences with respect to negotiation and implementation of these specific trade obligations in light of WTO rules.